

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2004

IN RE:

UNITED CITIES GAS COMPANY, a Division of  
ATMOS ENERGY CORPORATION, PETITION  
TO AMEND THE PERFORMANCE BASED  
RATEMAKING MECHANISM RIDER

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DOCKET NO.  
02-00850

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ORDER GRANTING PETITION TO INTERVENE

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This matter is before the Hearing Officer upon the *Petition to Intervene* ("Petition") filed on January 9, 2004 by the Staff of the Energy and Water Division of the Tennessee Regulatory Authority ("Staff").

**Background**

On August 2, 2002, United Cities Gas Corporation, a Division of Atmos Energy Corporation ("Atmos") filed a *Petition By United Cities Gas Company to Amend the Performance Based Ratemaking Mechanism Rider to Its Tariff*. The Consumer Advocate Division of the Office of the Attorney General ("Consumer Advocate") filed a Petition to Intervene on December 2, 2002. At a regularly scheduled Authority Conference held on March 3, 2003, the voting panel assigned to this Docket voted to grant the Consumer Advocate's Petition to Intervene and to appoint the General Counsel or his designee to act as Hearing Officer

to hear preliminary matters prior to the Hearing, to rule on any petitions for intervention, and to set a procedural schedule to completion.<sup>1</sup>

On January 9, 2004, the Staff of the Energy and Water Division of the Tennessee Regulatory Authority filed its *Petition to Intervene* in this matter. In its *Petition to Intervene*, Staff states: “This docket is closely related to Docket No. 01-00704 to which Staff is already a party.”<sup>2</sup> Staff further offers: “Resolution of Docket No. 02-00850 without Staff’s participation as a party would unfairly present Staff from asserting positions before the Authority taken with regard to the related issues pending in Docket No. 01-00704.”<sup>3</sup> Because Staff has acted in the role of a party in Docket No. 01-00704 containing closely related issues, Staff asserts it “cannot act in the role of neutral advisory staff in Docket No. 02-00850.”<sup>4</sup> Staff further supports its *Petition* by citing Tenn. Rules & Regs. 1220-1-2-.21(3).<sup>5</sup>

#### **Criteria for Permitting Intervention**

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:
  - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
  - (2) The petition states facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

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<sup>1</sup> *Order Suspending Tariff for an Additional Ninety (90) Days, Convening a Contested Case Proceeding, Granting Intervention and Appointing a Pre-Hearing Officer*, p. 2 (April 9, 2003).

<sup>2</sup> *Petition to Intervene*, p. 2 (January 9, 2004).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at p. 3.

<sup>5</sup> *Id.*

- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

In addition, Tenn. Rules & Regs. 1220-1-2-.21(3) states:

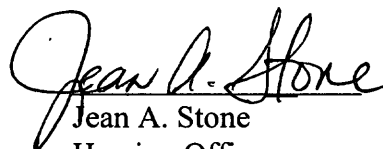
- (1) In any other contested case proceeding, designated staff members, represented by the general counsel or other counsel employed by the Authority, may participate as a party.

### **Discussion**

The Hearing Officer finds the *Petition to Intervene* filed by Staff was timely filed and served and substantiated that the legal rights, duties, privileges, immunities or other legal interests of the intervener may be determined in this matter. The Hearing Officer further finds that the orderly and prompt conduct of this proceeding will not be impaired by granting the *Petition*. In addition, no party has filed an objection to Staff's *Petition*. Upon applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer grants Staff's *Petition to Intervene*.

### **IT IS THEREFORE ORDERED THAT:**

1. The Staff of the Energy and Water Division of the Tennessee Regulatory Authority is hereby given leave to intervene and receive copies of any notices, orders or other documents herein.
2. Staff shall identify those individuals participating as a Party to all interested parties and staff of the Authority so as to prevent *ex parte* communications.<sup>6</sup>

  
Jean A. Stone  
Hearing Officer

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<sup>6</sup> See Tenn. Rules & Regs. 1220-1-2-.21(5).